Willie Lane
6WQE

GULF RESTORATION NETWORK

Working to Protect and Preserve the Gulf of Mexico

338 Baronne Street, Suite 200, New Orleans, LA 70112
Mailing Address: P.O. Box 2245, New Orleans, LA 70176
Phone: (504) 525-1528 Fax: (504) 525-0833
www.gulfrestorationnetwork.org

January 10, 2003

Ms. Ellen Caldwell
Environmental Protection Specialist
Water Quality Protection Division
U.S. Environmental Protection Agency Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733

Re: 12 Modified TMDLs for Mermentau and Vermillion/Teche River Basin waterbodies (subsegments 050102, 060204, 060212, 060701, 060703, 060901, 060909, and 060911 for fecal coliform; 060204 for sulfates; and 050201, 050501, and 060208 for TDS)

Dear Ms. Caldwell,

On behalf of the Gulf Restoration Network (GRN), I am submitting the following comments regarding the modified total maximum daily loads (TMDLs) for the above-mentioned water segments. The GRN is a diverse coalition of over 40 local, regional, and national organizations committed to uniting and empowering people to protect and restore the resources of the Gulf of Mexico. Members of the GRN are located in each of the states along the Gulf of Mexico. The GRN has concerns regarding the U.S. Environmental Protection Agency's (EPA) efforts to address water quality in the state of Louisiana. Our concerns for these particular TMDLs include:

I. Fecal Coliform TMDLs: Errors in Calculating Secondary Contact Recreation Attainment

Four of the eight TMDLs for fecal coliform have apparent calculation errors in the determination of secondary contact recreation criteria (SCR) attainment. Table 1 lists the four subsegments that were erroneously declared to be attaining the SCR use and the GRN's calculation of criteria for each using the available November to April water quality data (as presented in the appendices of each TMDL).

Table 1. Secondary Contact Recreation Criteria Calculations for Select Fecal Coliform TMDLs.

Subsegment	Waterbody	Arithmetic Mean	Geometric Mean	% Exceeding 2000 cfu/100mL
060204	Bayou Courtableau	1613.33	1048.30	33.3%
060701	Tete Bayou	1056.67	721.57	0%
060703	Bayou du Portage	2256.7	1107.93	33.3%
060901	Bayou Petite Anse	8250	2828.43	50%

Response to Comment I: According to Louisiana's 2000 305(b) report, at least five samples per parameter are required for the data to be considered in the State's assessments. This same limitation was used in this analysis. EPA accepts this requirement with the additional caveat that if the number of allowable exceedances is exceeded in less than the minimum number of samples, the water must be listed. Given that only one sample out of 2 or 3 samples demonstrated an exceedance in the cases of Bayous Courtableau, du Portage, and Petite Anse, the minimum number of exceedances has not been reached so there is no requirement to list. In other waters with datasets of a similar size, 2 exceedances out of 2 or 3 samples do indicate an impairment in that even if the required minimum of 5 samples were collected, >25% of the samples would have exceeded the criterion.

In Bayou Tete, given that none of the fecal coliform counts measured in samples collected during the November – April time period exceeded the criterion (2,000cfu/100ml), no TMDL for this water body is required.

In all but one of the subsegments, the secondary contact recreation standard is being violated in both the mean and the percent portions of the standard (1000 cfu/100mL and no more than 25% exceeding 2000 cfu/100mL annually, respectively). For Tete Bayou, the arithmetic mean does not meet the standard. This is enough evidence to show non-attainment, especially considering EPA's recommendation of using the arithmetic mean in cases based on only one or two samples per month (see EPA response to Louisiana Department of Environmental Quality (LDEQ) comments at http://www.epa.gov/region6/water/ecopro/latmdl/responses/sep_00_resp.pdf). Therefore, the four TMDLs listed in Table 1 must be modified to include the establishment of reductions in discharges from November to April as well.

II. Fecal Coliform TMDLs: Other Issues

Even putting the calculation errors aside, the data are insufficient to determine whether the secondary contact recreation use is being maintained. In all of the fecal coliform TMDLs, only two or three data points are used to make this determination. Not only are these data severely limited, the few samples available were only collected in November and December. This means that at least 66.7% of the SCR season is not being analyzed (January to April). Therefore seasonal variation is not being adequately considered. The November/December samples do not give a good representation of fecal coliform problems throughout the entire SCR season. We realize that the EPA is working with the limited data given them by the LDEQ, however in the interest of being conservative, the EPA should not assume the SCR standards are being attained based on such limited and seasonally biased data. EPA should also make every effort to ensure that LDEQ collects the required minimum of five samples per 30-day period throughout the entire year as they begin sampling within these basins again this year. This would ensure that this problem of insufficient data does not impair the EPA or the state's ability to craft appropriate and effective TMDLs in the future.

III. Application of the Water Quality Standard Should Not Be Considered a Conservative Assumption

In the all of the TMDLs considered here, the EPA used the application of the more "conservative" portions of the water quality standards as justification for the use of an implicit margin of safety. For example, in the fecal coliform TMDLs, it stated that "using the more conservative 200 cfu/100mL standard rather than 400 cfu/100mL for the summer primary contact recreational season and 1,000 cfu/100mL rather than 2,000 cfu/100mL for the winter season" was a conservative assumption. This cannot be considered as a conservative assumption. The actual standard calls for the use of **both** of these criteria, therefore choosing one and calling it the more conservative choice should not be used as a conservative assumption.[1]

[11] "Based on a minimum of not less than five samples taken over not more than a 30-day period, the fecal coliform content shall not exceed a log mean of 200/100 mL, **nor** shall more than 10 percent of the total samples during any 30-day period or 25 percent of the total samples collected annually exceed 400/100 mL. These primary contact recreation criteria shall apply only during the defined recreational period of May 1 through October 31. During the nonrecreational period of November 1 through April 30, the criteria for secondary contact recreation shall apply (emphasis added)." Environmental Regulatory Code. Part IX: Water Quality. 2001. State of Louisiana. Department of Environmental Quality. Page 55.

Response to Comment II: EPA appreciates the comment.

Response to Comment III: In each of the fecal coliform TMDLs, the use of 200cfu/100ml (or 1,000cfu/100ml) as a basis for these TMDLs constitutes a conservative assumption in that the daily load associated with the 200cfu/100ml (or 1,000cfu/100ml) criterion is not to be exceeded. The State's standards allow for instantaneous (or limited daily) exceedances of the 200cfu/100ml (or 1,000cfu/100ml) criterion as long as the logarithmic average concentration over a 30-day period does not exceed 200cfu/100ml (or 1,000cfu/100ml). Application of this approach in the TMDL development process would allow for higher daily loading on some days as long as the 30-day load does not exceed that load associated with 200cfu/100ml (or 1,000cfu/100ml). The TMDLs developed by EPA set a ceiling on daily loads that is not to be exceeded on any given day, which is highly conservative.

EPA agrees with GRN that the use of numeric criteria for TDS and sulfates does not adequately constitute a conservative assumption. This language has been removed from all TMDLs referenced in this notice written for TDS and sulfates. EPA believes the remaining conservative assumptions are sufficient to warrant the use of an implicit margin of safety in each of these TMDLs.

For the TDS TMDLs, the EPA stated that "using the TDS water quality standards…as established by Louisiana water quality standards rather than using site-specific criteria and seasonal variability factors" was a conservative assumption. A similar statement was made in the sulfates TMDL as well. However, Louisiana's Environmental Regulatory Code (ERC) only calls for case-by-case determination of criteria in the situations in which no criteria has been listed. All of the TDS and sulfates TMDLs discussed here have designated criteria listed in the ERC. Therefore, there is no choice implied which could be used to say that the more conservative choice was selected.

Because this water quality standard related conservative assumption is not applicable, the margin of safety must be reevaluated in order to determine if the remaining conservative assumptions are sufficient to warrant the sole use of an implicit margin of safety.

IV. Inadequate Public Notice

In the GRN's 2000 comments to the original drafts of the modified TMDLs discussed here, we expressed our concern over the inadequate level of public notice associated with TMDLs developed by EPA Region 6 for Louisiana. EPA Region 6 was only posting notices seeking public comment on TMDLs in Louisiana in the Federal Register. We explained that many of the concerned citizens in this state are unable to monitor the Federal Register on a regular basis. We also stated that at the very least EPA Region 6 should send out notices to those on their already established list of interested persons in Louisiana. EPA's response to this comment was, "EPA appreciates the comment and will take this into consideration when noticing future TMDLs." We don't believe that EPA has adequately considered this comment. First of all, we did not receive any notice, other than that in the Federal Register, on the TMDLs being addressed here. This is especially disturbing as we were one of the organizations that originally submitted comments. Our interest in the issue is obvious, and we would have liked to receive additional notice of their availability. Furthermore, the EPA has since released new TMDLs for public comment (i.e. 081602 (and associated subsegments)-Little River for mercury in fish tissue), and once again the only notice was made through the Federal Register. Since the LDEQ seems to do a more thorough job of notifying the public, we suggest that the EPA forward their notices to the LDEQ for distribution to their list of persons interested in TMDLs. This small change in the public notice process should be implemented as soon as possible so that Louisiana's citizens are able to more actively participate in the TMDL process.

V. Other Issues and Corrections

The fact that several of the fecal coliform TMDLs claim to be based on a year's worth of data is very misleading. The actual data used are from June 1998 to December 1998 (a total of 7 months, not 12). This should be noted in all instances where the data are referred to as a year's worth (1998) in the following TMDLs: Vermillion-Teche River Basin (060911), Tete Bayou (060701), Lake Peigneur (060909), Bayou du Portage (060703), Chatlin Lake Canal and Bayou Dulac (060212), and Bayou Petite Anse (060901).

In the Bayou Plaquemine Brule TMDL for TDS, the monthly TDS concentrations were reported as coming from a 5-year period even though January 1994 to May 1998 is actually only 4 years

Response to Comment IV: We appreciate the comment. It should be noted that EPA not only posts notices about the availability of these and all other TMDLs in the Federal Register, but EPA also posts notices on its website and in the following newspapers in Louisiana: The Times-Picayune, The Baton Rouge Advocate, and The Advisor (Lafayette). Federal statutes and regulations do not require that additional methods of public notice be followed. At this time, EPA believes that these media provide adequate means of informing the citizens of Louisiana of the availability of TMDLs.

Response to Comments V: All data collection periods, land use tables, and typographical errors found in the listed TMDLs were corrected as suggested by GRN.

EPA identified the following dischargers for those listed as "unknown" in the Bayou du Portage and Bayou Petite Anse TMDLs: Henderson Nina WTR plant (LA0112127), Baker Oil Tools – Hwy 90E (LA0112151), and Tri Drill Inc. (LA0111121). These facility names have been added to Table 2 of both TMDL documents as appropriate.

and 5 months. The EPA should change this to correctly reflect the time period used or actually analyze the full 5 years of data (May 1993 to May 1998). In this same TMDL, the last column in Table 2 should be changed from Load to Wasteload Allocation to eliminate any potential confusion.

Several of the TMDLs had errors in their Land Use Tables. For example, Table 1 in the Vermillion-Teche River Basin TMDL for fecal coliform states that wetlands encompass 16.5% of the land use even though the acreage is very close to that of agriculture which encompasses 46.6% of the land use. I believe the percentage for wetland land use should in fact be 45.8, as stated in the Lake Peigneur and Bayou Petite Anse fecal coliform TMDLs. However, this still leaves 3.1% of the land use unaccounted for in all three of those TMDLs. Granted this is not an extremely important detail in the overall scheme of the TMDLs, but the more accurate and complete the data and information presented, the easier it is for the public to participate in the process. Also, in the case of the Tete Bayou and Bayou du Portage TMDLs for fecal coliform Table 1 does not account for 15.5% of the land use.

There is also a typo in the Vermillion-Teche TMDL. On page 2, in the final paragraph, a sentence states, "For the purpose of calculating current loading on the this waterbody…." Either 'the' or 'this' should be removed from this sentence.

Finally, we would like some clarification on the identity of the 'unknown' dischargers in the Bayou Petite Anse and Bayou du Portage fecal coliform TMDLs. Bayou Petite Anse has two unknown dischargers with design flows of 1 million gallons per day in Table 2 (permit numbers LA0112151 and LA0111121). Bayou du Portage has a single unknown discharger also with a 1 million gallon per day design flow (permit number LA0112127). Why are these dischargers unknown and how is the design flow determined for them?

Thank you for your consideration of these comments in the final review of the 12 modified TMDLs. We look forward to receiving your response on this very important matter.

Respectfully submitted,

Vicki E. Ludden
Program Director for Wetlands and Water Quality
Gulf Restoration Network

cc: Louisiana Department of Environmental Quality, Baton Rouge